

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

RME Illinois, L.L.C.)	
)	
Petition for Issuance of Certificate of Public)	
Convenience and Necessity to Provide Onsite)	Docket No. 08-0490
Wastewater, Collection and Dispersal Services)	
to a Parcel in Lake Villa, Lake County, Illinois)	
Pursuant to Section 8-406)	
of the Illinois Public Utilities Act.)	
)	
RME Illinois, L.L.C.)	
)	
Petition for Issuance of Certificate of Public)	
Convenience and Necessity to Provide Onsite)	Docket No. 08-0491
Wastewater, Collection and Dispersal Services)	
to a Parcel in Long Grove, Lake County, Illinois)	(Cons.)
Pursuant to Section 8-406)	
of the Illinois Public Utilities Act.)	

MOTION TO STRIKE

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code Sec. 200.190, moves to strike portions of the Reply Brief filed by RME Illinois, LLC ("RME" or "Company"). In support of this motion, Staff states as follows:

1. On August 14, 2008, RME filed with the Illinois Commerce Commission ("Commission") petitions requesting Certificates of Public Convenience and Necessity ("Certificates" or "CPCN").
2. A hearing was held on March 24, 2009. Initial Briefs were submitted on April 23, 2009 and Reply Briefs were submitted on May 8, 2009.
3. Staff objects to and moves to strike certain portions of RME's Reply Brief ("RME RB"), beginning at page 4: "1) RME has prepared..." and continuing through

page 9, “developer funded Letter of Credit,” including Figures 1.0 and 2.0 (“Figures”). In Staff’s Initial Brief (“Staff IB”), Staff recommended that if a CPCN were issued, RME should be required to provide the investment for all backbone plant as required in 83 Ill. Adm. Code 600.370(a) for water utilities.¹

4. Rather than respond to this recommendation by Staff based upon record evidence in its Reply Brief, RME has chosen to allege facts, not contained in, and argument, not supported by, the record. RME has instead created Figures which are inaccurate and hypothetical “Scenarios” which have no bearing or significance.
5. Staff objects to the Figures as follows:
 - a. Citations to the record are not provided for the information contained in the Figures.
 - b. Some of the information included in the Figures is not supported by the record, for example, the amounts of the Security Letter of Credit for Falcon Crest and Eastgate Estates, included in Figure 1.
 - c. The Figures present some of the information in a misleading and deceptive manner. For example, Staff recommended one \$35,000 line of credit to cover both Falcon Crest and Eastgate Estates, but in Figure 2, RME has included two \$35,000 lines of credit each for Falcon Crest and Eastgate Estates.

¹ Staff made other recommendations which are addressed in the Staff IB, but are not relevant to this Motion to Strike.

- d. The two Figures are not comparable as they contain different elements. A foundation has not been laid in the record to enable the reader to fairly compare the Figures.
6. The three hypothetical “Scenarios” are not based upon any facts in the record and are completely imagined. Staff objects to the “Scenarios” presented on pages 7-8.
7. RME filed three rounds of testimony in this proceeding. It had ample opportunity to, but did not, present these hypothetical Scenarios and opinions as to what the results of the hypothetical Scenarios would be.
8. Had RME presented these hypothetical Scenarios in testimony, Staff would have had an opportunity to respond by objecting, filing responsive testimony, and conducting cross-examination.
 - a. If the record in this proceeding were as it is today, had RME presented these hypothetical Scenarios in testimony, they would be objectionable because they assume facts not in evidence. There is no evidence in the record that the developer has “run[] into financial difficulties” (RME RB, p. 7, Scenario 1), or that the “subdivision [will sit] idle for 2 years...” (*Id.*).
 - b. Result “A” and Result “B” under Scenario 1 are based upon pure speculation on RME’s part. There is nothing in the record to support RME’s premise in Result “B” that the “[t]he developer’s Letter of Credit would be used to start up the idle wastewater system.” (*Id.*)² In fact, the

² The sole beneficiary of the letter of credit is the Village of Long Grove. In Staff’s view, RME could not draw on it. (Staff IB, p. 15)

Letter of Credit for Falcon Crest had not been established yet when Staff filed rebuttal testimony. (See Staff Ex. 8.0, footnote 7)

- c. Scenario 2 suffers from the same deficiencies, but on a grander scale. There is no evidence in the record that the developer has “run[] into extreme financial difficulties and file[d] for bankruptcy” (RME IB, p. 7), or that the “property would be sold to “another developer who rezones the property to commercial” (*Id.*).
 - d. Result “A” and Result “B” under Scenario 2 are, again, based upon pure speculation. Staff recommended the use of an escrow account; there is nothing in the record to support RME’s statement that “RME would have lost its entire investment...” (*Id.*)
 - e. Scenario 3 is based upon the possibility that all lots are sold in one year, only 4 homes are constructed over 3 years, and extensive repairs totaling \$2,000 are required. Again, there is no record evidence to support this hypothetical scenario. In fact, in its testimony, RME assumed full build out of both developments. (RME Ex. 1.0, FC, RME Ex. 1.0, EG and Para. 3 and 5 of each Petition for Certificate of Convenience and Necessity)
 - f. Again, Result “A” and Result “B” are based entirely upon speculation. There is nothing in the record to support RME’s premise that “[t]he Letter of Credit would have paid for pump repairs” in Result “B.”³ (RME RB, p. 8)
9. Allowing RME to present these hypothetical Scenarios at the Reply Brief stage would deny Staff the opportunity to challenge the basis for the hypothetical Scenarios or the asserted Results. It also misleads and confuses the

Commission as to what the evidence really shows in this docket. With these Scenarios, RME is attempting to disguise the fact that it has failed to demonstrate, through the record and the evidence, that it is entitled to a CPCN.

10. Failure to strike the passages complained of will result in Staff being irreparably harmed in its ability to argue its position and to provide a full and complete record.

WHEREFORE, for the foregoing reasons Staff respectfully requests that RME's argument beginning at page 4, "1) RME has prepared..." and continuing through page 9, "developer funded Letter of Credit," including Figures 1.0 and 2.0 ("Figures") of the Reply Brief filed by RME on May 8, 2009 be stricken and for such other and further relief as is deemed appropriate.

Respectfully submitted,



JANIS E. VON QUALEN
JENNIFER LIN
Staff Attorneys

May 18, 2009

JAN VON QUALEN
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: (217) 785-3402
Fax: (217) 524-8928
jvonqual@icc.illinois.gov

JENNIFER LIN
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle St., Suite C-800
Chicago, IL 60601
Phone: (312) 793-8183
Fax: (312) 793-1556
jlin@icc.illinois.gov

³ See footnote 2, *supra*.